

## **2700      Requesting Waivers**

### **2701      Overview**

Area Agencies on Aging may request waivers of direct service delivery, adequate proportion, and cost sharing. An Area Agency on Aging requesting a waiver shall demonstrate that it has met the criteria for the waivers requested.

This chapter provides an outline of the Division of Aging and Adult Services operational principles and procedures for requesting waivers. **This policy chapter is subject to change as additional information and/or regulations are received from the U.S. Department of Health and Human Services, Administration on Aging.**

*Reference: Older Americans Act of 1965, as Amended in 2000, P.L. 106-501, §306 and §307.*

### **2702      Operational Principles for Waivers**

2702.1 The following waivers may be requested by an Area Agency on Aging.

- A) Direct Service Waiver is a request by an Area Agency on Aging to provide services directly, **instead of** contracting with an agency or individual, to provide services within its Planning and Service Area.
- B) Adequate Proportion Waiver is a request by an Area Agency on Aging to **not** expend the minimum proportions established for priority services.
- C) Cost Sharing Waiver is a request by an Area Agency on Aging to **not** implement cost sharing within its Planning and Service Area, as described in Division of Aging and Adult Services Policy Chapter 2900 – Service Contributions.

2702.2 Each type of waiver has criteria and documentation requirements that must be met prior to being approved by the Division of Aging and Adult Services.

### **2703      Operational Procedures for Direct Service Waivers**

2703.1 In accordance with the Older Americans Act Amendments of 2000, Section 307(a)(8)(A), "The plan shall provide that no supportive services, nutrition services, or in-home services will be directly provided by the State agency or an area agency on aging in the State, unless, in the judgment of the State agency,

- A) Provision of the service(s) by the Area Agency on Aging is necessary to assure an adequate supply of such service;
- B) The service(s) is directly related to the Area Agency on Aging's administrative functions; or
- C) The service(s) can be provided more economically, and with comparable quality, by the Area Agency on Aging."

2703.2 An Area Agency on Aging may request a waiver of the requirement to award subgrants or contracts to services providers for one or more services.

2703.3 An Area Agency on Aging may request a waiver of the requirement to award sub-grants or contracts to services providers for one or more services. A waiver is not necessary for direct provision of the following services: Information and Assistance, Outreach, Benefits Counseling, Pension Counseling, Long Term Care Ombudsman, Intake, Health Promotion, and State Health Insurance Assistance Program.

2703.4 An Area Agency on Aging requesting a waiver of this type must submit the following to the Division of Aging and Adult Services Program Administrator at least two months prior to the next contract year in which the waiver will become effective:

- A) The Request for Direct Service Waiver (Attachment A).
- B) Written justification identifying the criteria under which the Area Agency on Aging determines the waiver is warranted and adequately demonstrating that the Area Agency on Aging meets the measurements within the criteria identified.
- C) A copy of the notice of public input session, the distribution list used to issue the public input session, and the record of the public input session.

2703.5 The Division of Aging and Adult Services shall review the waiver request and tests for the assurance of adequate supply of such service or service provision can be accomplished more economically and with comparable quality. This review will be completed in 30 calendar days.

- A) Direct provision of the service(s) to assure adequate supply refers to minimizing service disruption due to the following:
  - 1) A service provider(s) did not respond to the Request for Proposal for the identified service(s). A transition plan must be submitted with the waiver request providing a description of how the direct provision will be implemented identifying, at a minimum, how clients will be transitioned, how clients will receive notification of such transition, how records will be transferred, and applicable time frames for implementation. The transition plan should also identify future efforts to award sub-grants or contracts to service providers for the provision of the service
  - 2) A service provider(s) unexpectedly drops out of the service network (example: goes out of business, no longer able to provide the service). A transition plan must be submitted with the waiver request providing a description of how the direct provision will be implemented identifying, at a minimum, how clients will be transitioned, how clients will receive notification of such transition, how records will be transferred, and applicable time frames for implementation.

- B) Direct provision of the service(s) can be provided more economically, and with comparable quality refers to the following:
- 1) Effectiveness refers to the capacity to provide a defined service including considerations of service quality and delivery criteria. The following factors shall be considered in measuring effectiveness:
    - a) Transition Plan refers to a description of how the direct provision will be implemented identifying, at a minimum, efforts to minimize service disruption, how clients will be transitioned, how clients will receive notification of such transition, how records will be transferred, and applicable time frames for implementation.
    - b) Public Comment refers to public input solicited through public input sessions and/or other information gathering session.
    - c) Customer Satisfaction refers to surveys, or other related data collection instruments, used to measure customer satisfaction levels of clients relating to the service(s) received by the client and the quality of such service as delivered by the service provider.
    - d) Monitoring Reports refers to the monitoring of service providers by Area Agencies on Aging and the subsequent reports identifying the frequency, programmatic and fiscal standards, quality assurance, and overall ratings (includes positive outcomes, deficiencies, and/or recommendations for improvement) of service providers in meeting contractual standards.
  - 2) Efficiency refers to the relative cost of providing a unit of service. At a minimum, the following factors will be considered in measuring efficiency:
    - a) Service Cost(s) refers to the total cost, including direct and indirect cost, to provide a unit of service as specified in the contract for the direct provision by the Area Agency on Aging to the service provision by the community-based service provider(s). Includes a review of the contract operating budget, itemized service budget, audit records, and/or other related documents.
    - b) Service Quantity refers to the quantity of services that would be delivered through direct provision by the Area Agency on Aging as compared to the community-based service providers. Includes a review of the contract operating budget, itemized service budget, audit records, and/or other related documents.

2704.1 In accordance with the Older Americans Act Amendments of 2000, Section 306(a)(2), ...Each such plan shall “provide assurances that an adequate proportion, as required under section 307(a)(2), of the amount allotted for part B to the planning and service area will be expended for the delivery of each of the following categories of services—

- A) Services associated with access to services (transportation, outreach, and information and assistance, and case management services);
- B) In-Home services including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and
- C) Legal assistance; and assurances that the Area Agency on Aging will report annually to the State agency in detail the amount of funds expended for each such category during the fiscal year most recently concluded.”

2704.2 The following proportions have been established for the priority services:

- A) Access to services at 16% allotment requirement.
- B) In-home services at 8% allotment requirement.
- C) Legal Assistance at 4% allotment requirement.

2704.3 Proportions shall be applied to the initial allocation of Part B funds indicated on the “Planning Level Alerts” issued each fiscal year to the Area Agencies on Aging by the Division of Aging and Adult Services. The minimum proportions shall be applied before making transfers between fund categories, and does not apply to Carryover or allowable fund transfers.

2704.4 Each fiscal year the Area Agencies on Aging identified to meet the established adequate proportion requirements are required to budget and expend at least the minimum percentages. Area Agencies on Aging cannot lower the amounts expended on priority services in a previous year to a lower proportion for the new fiscal year in order to fund non-priority services such as program development, socialization, recreation, advocacy or another Title III service.

2704.5 An Area Agency on Aging shall request a waiver of the requirement to expend the adequate proportion amounts for priority services.

2704.6 An Area Agency on Aging may seek a waiver for **one or more** of the following priority service categories. The request for waiver must specify if the waiver will be applied to the entire Planning and Service Area.

- A) An Area Agency on Aging will budget and expend at least the minimum proportion, as established by the Division of Aging and Adult Services, of the amount allotted for Part B to the Planning and Service Area for the delivery of priority services [OAA, Section 306(a)(2)].

- 1) Services associated with access to services such as transportation, outreach and information and assistance, and case management services.
  - 2) In-Home Services including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction.
  - 3) Legal assistance; and assurances that the Area Agency on Aging will report annually to the Division of Aging and Adult Services the amount of funds expended for each such category during the fiscal year most recently concluded.
- C) The following criteria apply to an Adequate Proportion Waiver:
- 1) Services furnished for the category(ies) in the planning and service area are sufficient to meet the need for the service(s) in the area.
  - 2) A timely public input session was conducted, upon request.
- D) An Area Agency on Aging requesting a waiver of this type must submit the following to the Division of Aging and Adult Services Program Administrator at least two months prior to the next contract year in which the waiver will become effective:
- 1) The Request for Adequate Proportion Waiver (Attachment B). The amount to be budgeted and expended shall be specified on the Request for Adequate Proportion Waiver.
  - 2) Written justification demonstrating that the Area Agency on Aging's specified proportion for the priority service(s) is sufficient in units and funds to meet the identified needs of the Planning and Service Area.
  - 3) A copy of the notice of public input session, if requested, the distribution list used to issue the notice of the public input session, and a copy of the record of the public input session.
- D) The Division of Aging and Adult Services reviews the waiver request and tests that the priority services in the Planning and Service Area are sufficient in units and funds to meet the needs as identified in its Area Plan. This review will be completed within 30 calendar days.
- 1) Sufficiency refers to the ability to meet the needs of a situation or a proposed end. At a minimum, the following factors shall be considered in measuring for sufficiency:
    - a) Identification of service need, including the formula used to determine service needs factoring in the existing waiting list for the area, if applicable.
    - b) Rationale for units to be delivered to meet service needs.
    - c) Rationale for funds to be expended to meet service needs.

**2705 Operational Procedures for Cost Share Waivers**

2705.1 In accordance with the Older Americans Act Amendments of 2000, Section 315(a)(1) and (2), "...a State is permitted to implement cost sharing for all services funded under the Older Americans Act by recipients of the services. The State is not permitted to implement the cost sharing described [above] for the following services:

- A) Information and assistance, outreach, benefits counseling, or case management services.
- B) Ombudsman, elder abuse prevention, legal assistance, or other consumer protection services.
- C) Congregate and home delivered meals.
- D) Any services delivered through tribal organizations."

2705.2 Cost sharing is required for respite service, but the Area Agency on Aging is encouraged to implement cost sharing for all permitted services.

2705.3 An Area Agency on Aging may request a waiver from implementing cost sharing for the services identified in 2705.2.

2705.4 An Area Agency on Aging may seek a waiver for **one or more** of the permitted services. The request for a waiver must specify if the waiver will be applied to the entire Planning and Service Area or applied to a specified county or counties.

2705.5 The following criteria apply to a Cost Sharing Waiver:

- A) A significant portion of individuals receiving services under the Older American's Act subject to cost sharing in the Planning and Service Area have incomes below the threshold established in the Division of Aging and Adult Services Policy Chapter 2900 – Service Contributions; or
- B) Cost sharing would be an unreasonable administrative or financial burden upon the Area Agency on Aging.

2705.6 An Area Agency on Aging requesting a waiver of this type must submit the following to the Division of Aging and Adult Services Program Administrator at least two months prior to the next contract year in which the waiver will become effective:

- A) The Request for Cost Sharing Waiver (Attachment C).
- B) Written justification adequately demonstrating one of the following:
  - 1) A significant portion of individuals receiving services under the Older Americans Act subject to cost sharing in the Planning and Service Area have incomes below the threshold established in the Division of Aging and Adult Services Policy Chapter 2900 – Service Contributions; or

- 2) Cost sharing would be an unreasonable administrative or financial burden upon the Area Agency on Aging.
  - 3) A copy of the notice of public input session, the distribution list that was used to issue the notice of public input session, and the record of the public input session.
- C) The Division of Aging and Adult Services shall review the Request for Cost Sharing and test for significance in the portion of individuals subject to cost sharing having incomes below the identified thresholds or for unreasonable administrative or financial burden. This review will be completed within 30 calendar days.
- 1) Significance refers to having or likely to have influence or effect of a noticeably or measurably large amount probably caused by something other than mere chance. At a minimum, the following factors shall be considered in measuring for significance in the portion of individuals subject to cost sharing having incomes below the identified thresholds:
    - a) Population below poverty levels as defined by the U.S. Census Bureau within the identified area.
    - b) Population below poverty served by the Area Agency on Aging. A significant proportion is equal to an amount greater than 50%.
    - c) Public comment, which refers to public input solicited through public input sessions and/or other information gathering session.
  - 2) Unreasonable refers to exceeding the bounds of reason. At a minimum, the following factors shall be considered in measuring for unreasonable administrative or financial burden:
    - a) Staffing Patterns refers to a review of the staffing ratio of direct staff to client percentage of full time equivalents devoted to direct staff functions, management functions, and supervisory functions; organizational chart, and other related documents.
    - b) Staffing Qualifications refers to a review of the education, experience, training, certification/licensure, and other related items of applicable staff.
    - c) Administrative Costs refers to the total cost, including direct and indirect costs associated in the implementation of cost sharing.
    - d) Administrative Impact refers to the overall impact on the functions of the Area Agency in implementing cost sharing.

- 2706.1 Approval of a waiver request for the full-term of the Area Plan on Aging shall be granted for waivers meeting the criteria established in sections 2703, 2704 and 2705.
- 2706.2 Should the Division of Aging and Adult Services propose to approve a waiver request, the Administration shall:
- A) Publish the intention to grant such a waiver and the justification for the waiver at least 30 days prior to the effective date of the decision to grant the waiver.
  - B) A service provider(s) or recipient(s) of service from the area affected by the waiver will be afforded an opportunity for a public input session, upon request to the Division of Aging and Adult Services. The service provider(s) or recipient(s) of service must request a public input session prior to the effective date of the decision to grant a waiver.
- 2706.3 Should the Division of Aging and Adult Services deny a waiver request, the Administration shall provide the following to the Area Agency on Aging:
- A) Written notice of the denial and justification of the decision to deny the waiver shall be provided within 30 days.
  - B) Written notice of the process and time frames in which the Area Agency on Aging may request and Administrative Review, as described in Division of Aging and Adult Services Policy Chapter 1930 – Appeals and Grievances.
  - C) Written notice informing the Area Agency on Aging of the opportunity to review the documents used to determine the decision for denial.
- 2706.4 Provisional Approval of a waiver request shall only be granted for Direct Service Waivers provided that the Area Agency on Aging has adequately demonstrated that the provision of services by the Area Agency is necessary to assure an adequate supply of such service(s) as identified in 2703.5.A.
- A) An Area Agency on Aging requesting Provisional Approval of a Direct Service Waiver, must submit the items identified in 2704.A and B.
  - B) The Division of Aging and Adult Services will review the Request for Direct Service Waiver and grant Provisional Approval, provided that the Area Agency on Aging meets the requirements detailed in 2703.5.A.

**EXHIBITS:**

**2000C - Request for a Direct Service Waiver**

**2000D - Request for an Adequate Proportion Waiver**

**2000E - Request for a Cost Sharing Waiver**